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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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PAULINE M. VELEZ,)
)
Plaintiff,)
) No.
vs.) 4:20-cv-05170-KAW
)
DEPARTMENT OF VETERANS AFFAIRS)
ET AL.,)
)
Defendants.)

DEPOSITION OF
CRYSTAL KEELER
VIA REMOTE WEB CONFERENCE
Friday, August 13, 2021

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REPORTED BY: WAYNE A. HUNTER, CSR 5456
FILE NO.: AF05721

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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PAULINE M. VELEZ,)	
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Plaintiff,)	
)	No.
vs.)	4:20-cv-05170-KAW
)	
DEPARTMENT OF VETERANS AFFAIRS)	
ET AL.,)	
)	
Defendants.)	

Deposition of CRYSTAL KEELER, taken on
behalf of Plaintiff, via remote web conference,
commencing at 9:33 a.m., on Friday, August 13, 2021,
before Wayne A. Hunter, CSR No. 5456.

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A P P E A R A N C E S

FOR THE PLAINTIFF (via Zoom):

HOYER & HICKS
BY: NICOLE B. GAGE, ESQ.
Four Embarcadero Center
Suite 1400
San Francisco, Ca. 94111
(415) 766-3539
ngage@hoyerlaw.com

FOR THE DEFENDANT (via Zoom):

VALERIE E. SMITH, ESQ.
Assistant U.S. Attorney
450 Golden Gate Avenue, Box 36055
San Francisco, Ca. 94102
(415) 436-6985
Valerie.smith2@usdoj.gov

ALSO PRESENT:

COLEEN WELCH, ESQ.
U.S. Department of Veterans Affairs
150 Muir Road
Martinez, Ca. 94553
(202) 552-9605
coleen.welch@va.gov

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I N D E X

WITNESS: CRYSTAL KEELER

EXAMINATION	PAGE
BY MS. GAGE	5

EXHIBITS:

NUMBER	PLAINTIFF'S DESCRIPTION	PAGE
1	Notification of Personnel Action	41
2	Executive Career Field Performance Appraisal	49
3	Executive Career Field Performance Appraisal	55
4	Performance Plan for Fiscal Year 2010	63
5	Compensation Plan Action	66

QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:

(None)

INFORMATION TO BE SUPPLIED:

(None)

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1 THE REPORTER: Hello. My name is Wayne
2 Hunter. I am a California certified court reporter,
3 and this deposition is being held via videoconference
4 equipment. The witness and reporter are not in the
5 same room. The witness will be sworn remotely.

6 CRYSTAL KEELER
7 having been first duly sworn was
8 examined and testified as follows:

9 EXAMINATION BY MS. GAGE

10 Q. Good morning, Ms. Keeler. My name is Nicole
11 Gage, and I'm one of the attorneys representing the
12 plaintiff in this case. Can you please state your full
13 name for the record?

14 A. Crystal Keeler.

15 Q. Thank you. And have you ever been deposed
16 before?

17 A. I believe so, for some kind of EEO complaint
18 in the past.

19 Q. Okay. So, I'm just going to go over a few
20 rules to familiarize you with the process a little bit
21 since it's been awhile.

22 A. Sure.

23 Q. So, the first thing is that everything that's
24 said in is this room is subject to the penalty of
25 perjury. You took an oath, and that means that your

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1 testimony will be like if you were testifying in a
2 court of law. And the penalty of perjury includes if
3 you say you do not recall something when in fact you do
4 recall something. So, please be sure to give your
5 best, most accurate testimony today. And the testimony
6 that you give today can be used at trial. But you will
7 be given an opportunity to review the transcript and
8 make any corrections. However, any corrections that
9 you make can be pointed out to the jury later on, and
10 you can be asked to explain why you changed your
11 testimony. Does that make sense?

12 A. Yes.

13 Q. Great. And another thing is that the court
14 reporter will be recording everything as we go, so
15 there will be a transcript to review. So, one of the
16 things to keep in mind is to please not interrupt.
17 Sometimes you'll think you know where a question is
18 going and will just naturally want to jump in with an
19 answer. But just so we can have a clear record just
20 make sure to let me finish a question before you begin
21 to answer.

22 Another thing is to please give verbal answers
23 so they can be recorded properly. So, please respond
24 with yes or no instead of nodding, or saying like uh
25 huh. And if you don't understand a question, please

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1 ask me to rephrase it. I'm happy to rephrase any
2 question that doesn't make sense. And it's better to,
3 you know, get clarification than try to answer a
4 question that you don't understand. Does that make
5 sense?

6 A. Yes.

7 Q. Okay. And from time to time your counsel may
8 make objections to the questions that I ask to preserve
9 the record, but unless you're instructed not to answer
10 by your counsel, then I am entitled to a response.
11 Does that make sense?

12 A. Yes.

13 Q. Great. And you can ask for a break at any
14 time throughout the day. Feel free to let me know if
15 you need to take a break for any period of time. I
16 just ask that you wait until there's not an actual
17 question pending. And then finally, I don't want you
18 to speculate today. If you don't have the answer to a
19 question, if you really have no idea as to what the
20 answer could be, I don't want you to just pull a guess
21 out of thin air. However, I am entitled to your best
22 estimate. So, for instance, if I were to ask you how
23 long is the desk in my office, you wouldn't be able to
24 give an estimate because you've never seen it. But if
25 I were to ask how long the desk is in your office, you

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1 would be able to give an estimate even if you might not
2 actually know the exact answer, because you're sitting
3 there and have knowledge of that fact. Does that make
4 sense to you?

5 A. Yes.

6 Q. Okay. Great. Is there any reason that you
7 cannot give your best testimony today?

8 A. No.

9 Q. Okay. Have you taken any medication in the
10 past 24 hours that would interfere with your ability to
11 accurately testify?

12 A. No.

13 Q. Okay. Have you had any alcoholic beverages in
14 the last 24 hours?

15 A. No.

16 Q. Okay. Is there any other reason you would not
17 be able to testify completely and accurately today?

18 A. No.

19 Q. Great. And have you ever been convicted of a
20 felony?

21 A. No.

22 Q. Okay. And you said that you had been deposed
23 before, is that correct?

24 A. Yes.

25 Q. Do you recall how many times?

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1 A. I believe just once.

2 Q. Okay. And you said it was in an EEO case?

3 A. Yes.

4 Q. Do you remember broadly what the case was
5 related to?

6 MS. SMITH: Objection. Without naming a
7 specific name you can answer.

8 THE DEPONENT: I -- I believe it was in
9 relation to -- shoot. I really don't know. I -- I
10 don't recall exactly what it was. It was some employee
11 um... supervisor issue. That's all I can recall about
12 it. It was sometime ago.

13 Q. BY MS. GAGE: Okay. Do you know
14 approximately how long ago?

15 A. I mean, I can't even tell you what the subject
16 matter was exactly, so no, I can't tell you
17 approximately how long.

18 Q. Was it more than five years ago?

19 A. No. I don't think it was that long ago.

20 Q. Okay. More than two years ago?

21 A. Yes. I think so.

22 Q. And have you ever been called to testify in
23 court or in an arbitration?

24 A. No. No.

25 Q. Did you review any documents in preparation

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1 for today's deposition?

2 MS. SMITH: Objection. To the extent you're
3 asking about documents she may have reviewed with her
4 attorney, with counsel, I'm instructing her not to
5 respond.

6 Q. BY MS. GAGE: Sure. I don't want any
7 information about what you may have discussed with
8 counsel or anything that you reviewed in conjunction
9 with counsel. But on your own accord did you review
10 any documents to prepare for today?

11 MS. SMITH: You can answer.

12 THE DEPONENT: Okay. I reviewed the personnel
13 record for Dr. Velez.

14 Q. BY MS. GAGE: Okay. And just because
15 we're remote, do you have any documents with you right
16 now? Is there anything visible that you can look at
17 while we're in the deposition?

18 A. No. No.

19 Q. Okay. And I don't want to know any
20 information that was exchanged between you and your
21 attorney, because that information is privileged, but I
22 would like to know if you met to discuss today's
23 deposition. Just a yes or no answer.

24 MS. SMITH: You can answer.

25 THE DEPONENT: Yes.

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1 Q. BY MS. GAGE: Okay. And when did you
2 meet?

3 A. Yesterday.

4 Q. Okay. And about how long did you meet for?

5 A. Half an hour.

6 Q. Okay. And was anyone else privy to those
7 meetings?

8 A. Uh... Ms. Welch and Ms. Smith and myself.

9 Q. Okay. Have you discussed today's deposition
10 with anyone other than your counsel?

11 A. No.

12 Q. Okay. And are you currently employed by the
13 VA, Northern California Health System?

14 A. I am.

15 Q. And I'm probably going to refer to that just
16 as the VA throughout the day, just because that's
17 easier.

18 MS. SMITH: Objection. If we're going to talk
19 about the VA in general, then that's distinct from Nor
20 Cal VA.

21 MS. GAGE: Got it.

22 Q. Okay. Nor Cal VA is not the best way to refer
23 to it? Does that make sense to you if I say Nor Cal
24 VA, or would that get into like other branches? Does
25 Nor Cal VA work as a description?

1 A. Yes.

2 Q. Okay. So, when did you first begin working
3 for Nor Cal VA?

4 A. I started with Nor Cal VA in March of 1999.

5 Q. Okay. And what was your job title at that
6 time?

7 A. At that time I was a Program Analyst assigned
8 to the Nursing Service.

9 Q. Okay. And what types of responsibilities did
10 you have in that role?

11 A. Admin support. Timekeeping. I was a
12 supervisor for Inpatient Medical Support Clerks.

13 Q. Okay. And how long were you in that position
14 for?

15 A. I was in that position for three years.

16 Q. And did you apply for another position after
17 that?

18 A. Yes.

19 Q. And what position was that?

20 A. I was then the Administrative Officer for
21 Nursing Service.

22 Q. Okay. And what year did you begin that
23 position?

24 A. Let's see. First one was three years, so...
25 about 2003, I believe.

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1 Q. Sure. And how were your rolls -- your job
2 duties different in that role as opposed to the role
3 that you were in to begin with?

4 A. In that role I was now the lead administrative
5 person within the entire service. I wasn't just
6 supporting one group or supervisor. I was part of the
7 executive team of the Nursing Service.

8 Q. And what is your current job title?

9 A. My current job title is Healthcare Recruiter
10 for Northern California VA.

11 Q. And after you were the admin officer for
12 Nursing Service approximately 2003, did you have
13 various other rolls before you became Health Care
14 Recruiter?

15 A. Yes. I worked as the supervisory Health
16 System Specialist in Medical Service, which is
17 essentially an Administrative Officer for the Medical
18 Service.

19 Q. And do you know approximately what years you
20 were in that position?

21 A. Let's see. It was 2007 until 2015.

22 Q. And what position did you hold after that one?

23 A. After that one I came into this position.

24 Q. Okay. So, you began this position around
25 2015?

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1 A. Yes. October.

2 Q. October 2015. And what are your job duties as
3 a Health Care Recruiter?

4 A. As an Health Care Recruiter my job duties are
5 to advertise for vacancies for physicians, dentists and
6 other positions as determined by my facility that are
7 hard to recruit or fill. I also vet those candidates
8 that may apply to the opportunities that I've
9 advertised, and refer them as necessary to the Hiring
10 Manager.

11 Q. Did you ever vet candidates in any of your
12 previous rolls when you were working with Nor Cal VA?

13 A. When I was in Medical Service, because it is a
14 largely physician-based service line, yes. That was my
15 No. 1 priority assigned to me, was to recruit
16 physicians.

17 Q. And that was the role that you were in from
18 about 2007 to 2015, correct?

19 A. Yes. I had many --

20 Q. Go ahead.

21 A. I had many duties within that department, but
22 that was made my No. 1 priority by the Service Chief.

23 Q. And what was the name of the Service Chief
24 when you were in that role?

25 A. Dr. David Siegel.

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1 Q. Okay. And so you have a fair amount of
2 experience in vetting candidates, physicians then,
3 correct?

4 A. Correct.

5 Q. And about how many candidates would you say
6 you get per year in your current role?

7 A. Per year, anywhere between 200 and 300.

8 Q. And how many of those candidates actually end
9 up being hired by Nor Cal VA?

10 A. On average we have hired approximately
11 anywhere from 90 to 120.

12 Q. And what is the process that you use when you
13 go about vetting candidates?

14 A. I verify whether or not they're a U.S.
15 citizen, whether they have a -- so everything is based
16 on basic requirements in the qualifications standards
17 for positions, so it's U.S. citizenship, their
18 education, their residency training and their medical
19 license, according to whatever states that they have
20 worked in, whether they be active or inactive.

21 So, I review their CV, and many times they
22 will not list an inactive license. But if I notice
23 that they had a state they've worked, in I will check
24 that state to be sure that there were no restrictions
25 on any license, or that they were relinquished for

1 negative reasons. So, those candidates will not be
2 eligible for referral.

3 Q. And assuming that the candidates meet the
4 basic qualification, like U.S. citizenship and
5 licensure requirements, is there a certain process that
6 you use to determine which candidates rank higher than
7 others in terms of qualifications for each position?

8 A. No.

9 MS. SMITH: Objection.

10 Q. BY MS. GAGE: Is that something that you
11 use your subjective judgment to determine?

12 MS. SMITH: Objection.

13 Q. BY MS. GAGE: You can answer.

14 A. I do not make a determination of who gets
15 referred and who does not. Every candidate who meets
16 basic requirements is referred for consideration.

17 Q. I see. And who do you refer the candidates
18 to?

19 A. The Hiring Manager for that particular
20 position.

21 Q. How many Hiring Managers are there that you
22 work with?

23 A. I couldn't give you a number. There's a great
24 number of departments within the facilities throughout
25 Nor Cal VA, so it's a very large number.

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1 Q. Do you know approximately how many departments
2 there are?

3 A. I could... let's see. Service. Give me a
4 second to count the services that I am working with
5 currently. Let me make a -- check notes -- oh. I have
6 a list of services.

7 MS. SMITH: Objection. Objection. Ms.
8 Keeler, don't refer to anything outside of this
9 deposition. Anything that you should be looking at
10 will be provided to you by counsel. At this point Ms.
11 Gage is just asking for your best estimate. If you're
12 unable to provide one, please let us know. Otherwise,
13 provide your best estimate.

14 THE DEPONENT: Okay. I could say maybe 15
15 service line, and within those service line there could
16 be a dozen Hiring Managers depending on the specialty
17 or subspecialty.

18 Q. BY MS. GAGE: Okay. And when you're
19 vetting candidates, do you have to have particular
20 knowledge as to each service line to determine whether
21 they're qualified?

22 MS. SMITH: Objection. Go ahead. You can
23 answer if you understand the question.

24 THE DEPONENT: So, I have references through
25 the service lines of like the number of years required

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1 in a residency for the various specialties. So, that
2 kind of knowledge I would have.

3 Q. BY MS. GAGE: Is that documentation that
4 is given to you, that explains, you know, standards,
5 such as the number of years they were qualified?

6 MS. SMITH: Objection.

7 THE DEPONENT: No.

8 Q. BY MS. GAGE: So, when you say you had
9 references through the service lines, what do you mean
10 by that?

11 A. I will talk with the Hiring Manager to verify
12 what is the proper number of years of residency if I am
13 not already aware. I have been vetting position
14 candidates for a number of years now, and so I
15 generally know. Internal medicine requires four years.
16 Neurosurgery requires seven, so...

17 Q. And I want to talk a little bit about your
18 educational history. What's the highest education that
19 you've completed?

20 A. High school.

21 Q. And after high school did you go directly into
22 this field?

23 A. No, I went into the military.

24 Q. The military. Okay. How long were in the
25 military for?

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1 A. Seven -- a little over seven years.

2 Q. And what did you do in the military?

3 A. My job series was a Medical Administration
4 Specialist.

5 Q. And did you gain skills that helped you with
6 your current position?

7 A. Not exactly.

8 Q. What types of duties were you performing as a
9 Medical Administration Specialist?

10 A. Initially we start as outpatient records,
11 managing patient files. We can also work in admissions
12 and dispositions, air vac, coordinating patients going
13 from base to base for various care that's delivered.

14 Um... resource management, which is billing.
15 So, any administrative role within the hospital, we
16 could be assigned.

17 Q. Okay. And are you familiar personally with
18 Dr. Velez?

19 A. I know Dr. Velez by name.

20 Q. By name. Have you ever interacted with her in
21 person?

22 A. In person? At occasional meetings, yes.

23 Q. Would you say multiple times a year?

24 A. No. Maybe once or twice.

25 Q. Like in the history of your working for Nor

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1 Cal?

2 A. In the history of working for Nor Cal, I
3 haven't interacted with her a lot. I would say over
4 the last few years I haven't interacted with her at
5 all.

6 Q. Do you know, is there any reason why you have
7 interacted with her less over time?

8 MS. SMITH: Objection.

9 THE DEPONENT: Yes. Oh.

10 MS. SMITH: You can answer. Go ahead.

11 THE DEPONENT: Sorry. When I was in medical
12 assist, I worked a lot with clinic graphics, um...
13 things that had to do with performance measures for the
14 physicians seeing patients. And her team was uh... a
15 group that I worked with. So, I would have to get the
16 okay from her to participate with her team.

17 Um... and being in the position I am in now,
18 it's not necessary for me to interact with her.

19 Q. BY MS. GAGE: I see. And when you say her
20 team, are you referring to the vascular surgery team?

21 A. No. It was an administrative team at the
22 time. I think -- I believe she oversaw a couple of
23 administrative staff who were working on those types of
24 things.

25 Q. So, are you referring to the Martinez campus?

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1 A. Yes.

2 MS. SMITH: Objection. Can you clarify what
3 you mean by Martinez campus?

4 Q. BY MS. GAGE: So, my understanding is that
5 Dr. Velez had the position of Site Manager at the
6 Martinez campus, and there were admin staff at that
7 facility that they oversaw and worked with. Is that
8 correct?

9 MS. SMITH: Objection. To the best of her
10 knowledge she can answer.

11 THE DEPONENT: I know that there were
12 administrative staff under her purview. I am not sure
13 if she was a supervisor, but I did work with those team
14 members and some of the efforts that I had to do in
15 Medical Service.

16 Q. BY MS. GAGE: Okay. And what kind of work
17 did you do with those team members?

18 A. So many years ago. Um... it had something to
19 do with clinic graphics uh... how many appointments
20 were available, how many appointments were missed by
21 patients, um... doctors signing notes timely, things of
22 that nature.

23 Q. Okay. And what was your involvement with that
24 process? I guess I can clarify that a little bit. Did
25 you go in person to meet with these team members and

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1 discuss certain issues?

2 A. No.

3 Q. Okay. Did you communicate via email?

4 A. Email, yes.

5 Q. And were there any other ways you communicated
6 with them?

7 A. No.

8 Q. And you would sort of coordinate what was
9 going on by asking them questions, is that correct?

10 A. Yes.

11 Q. Okay. And how frequently would you say that
12 you interacted with Dr. Velez's team?

13 A. I don't really know.

14 Q. Do you have an estimate?

15 A. Um...

16 Q. Was it more than once a week?

17 A. Uh... I would be okay with saying once a week.
18 I -- I can't say for sure. It was so long ago.

19 Q. And around what time frame would this have
20 been? Would this have been somewhere in between 2007
21 to 2015 when you were the supervisor of health system
22 specialists?

23 A. Yes.

24 Q. And did you ever communicate with Dr. Velez
25 via email or phone during that time?

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1 A. I don't recall.

2 Q. Okay. But you did communicate with members of
3 her team?

4 A. Yes.

5 Q. Okay. And how did you know that they were
6 members of her team? Was there a certain way that you
7 understood that to be the case?

8 A. I don't know exactly how to answer that. I
9 mean, you know, the department and who supports that
10 department.

11 Q. Okay. So, your understanding was that Dr.
12 Velez supported the department at Martinez?

13 A. The people I was talking to, she was working
14 with.

15 Q. I see. And were they in a specific field of
16 people that you were talking to?

17 A. Um... a specific field? I mean, they worked
18 doing benefits and data management type work.

19 Q. I see. And do you know if they were based at
20 Martinez specifically?

21 A. Yes.

22 Q. Okay. Did you work with similar groups of
23 people at other Nor Cal VA campuses?

24 A. Yes.

25 Q. And how many other campuses are there?

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1 A. I believe Nor Cal VA has 10 locations.

2 Q. Okay. Did you work more closely with some
3 locations than others?

4 A. The Martinez VA outpatient clinic is the
5 second largest site for us, so that would be usually
6 probably the -- the next -- the second place that would
7 be the most communicated with.

8 Q. Okay. And what was the first largest site?

9 A. Sacramento.

10 Q. And currently do you communicate with the same
11 people at the Martinez site or the Sacramento site?

12 A. I do not. I have no need to as a Health Care
13 Recruiter.

14 Q. Do you know what the Office of Resolution
15 Management is?

16 A. I know the name.

17 Q. Okay. Have you ever interacted with the
18 Office of Resolution Management during your tenure with
19 Nor Cal VA?

20 A. I'm not sure. But I had --

21 (Simultaneous speech.)

22 Q. I'm sorry. Go ahead.

23 A. I'm sorry. I had been a trained mediator with
24 the VA, so I'm not sure. So, I don't recall if that
25 was before or after that group.

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1 Q. And when you say you were a trained mediator,
2 what year did you receive training for that?

3 A. I could not -- I couldn't tell you that today.

4 Q. Was it more than five years ago?

5 A. Absolutely it was.

6 Q. More than ten years ago?

7 A. It was when I was in Nursing Service, during
8 that time frame.

9 Q. Okay. Somewhere around early 2000 maybe?

10 A. Yeah. I would say I was there from 1999 until
11 2005, so somewhere in that time frame.

12 Q. And what did that training consist of?

13 A. Uh... wow! Um... it's hard to recall that far
14 back. But something to do with, you know, meeting with
15 two different people who have an issue, and trying to
16 get them to come to a common place so that they can
17 proceed with whatever, you know, disagreement that they
18 were having, without having to go to the next level.

19 Q. Okay. And did you apply to become a mediator
20 with the VA?

21 A. I don't believe I had to apply. I believe it
22 was one of those additional tasks that you could kind
23 of volunteer for, or maybe you were volunteered for by
24 your manager.

25 Q. Sure. And did you ever actually engage as a

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1 mediator in any case?

2 A. I'm sure I did a few times, but not too many.

3 Q. Do you think more than five times?

4 A. No. I think probably five or less.

5 Q. Okay. Do you remember any of those occasions
6 what exactly the dispute was?

7 MS. SMITH: Objection. Don't mention specific
8 names. To the extent you remember you can answer.

9 THE DEPONENT: I do not recall.

10 Q. BY MS. GAGE: Did you enjoy being a
11 mediator?

12 A. I'm sorry?

13 Q. Did you enjoy being a mediator?

14 A. No. It's not a lot of fun.

15 Q. Okay. Is that why you stopped doing that?

16 A. My role in Medical Service was more uh...
17 required more of me. So, I did not have the time to do
18 that any longer.

19 Q. Was it pretty contentious? Is that why it
20 wasn't much fun?

21 MS. SMITH: Objection.

22 THE DEPONENT: It can be contentious.

23 Q. BY MS. GAGE: Were you ever involved in
24 the investigation of any complaints?

25 MS. SMITH: Objection. What do you mean by

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1 the term complaints?

2 MS. GAGE: I guess I can specify.

3 Q. EEO complaints?

4 A. I... I'm trying to think. I know that I have
5 been asked for -- or had to speak to someone at our
6 facility, but I don't know if it was an EEO complaint.
7 It was some kind of investigation about a complaint
8 that had been made, but I'm not positive if it was EEO
9 or not.

10 Q. And was that during the time that you worked
11 as a mediator?

12 A. No.

13 Q. When was that?

14 A. I think is that was within the last five
15 years.

16 Q. Okay. And do you know why you were asked
17 specifically to speak with someone about the complaint?

18 A. Yes, because I worked with the people within
19 those departments.

20 Q. Okay. Do you recall which department?

21 A. The Mental Health Service.

22 Q. Mental Health Service. Okay. So, just to
23 clarify, someone who worked in the Mental Health
24 Service Department had made some kind of complaint, and
25 there was an investigation, and you were interviewed

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1 about what had taken place, is that right?

2 A. Correct.

3 MS. SMITH: Objection.

4 Q. BY MS. GAGE: Was that the only time
5 you've been interviewed in connection with the
6 investigation of an EEO complaint?

7 A. To the best of my knowledge.

8 Q. Okay. Were you ever involved in the process
9 of employees filing complaints with the Office of
10 Resolution Management?

11 MS. SMITH: Objection.

12 THE DEPONENT: No.

13 Q. BY MS. GAGE: Do employees submit
14 complaints of any type to you?

15 MS. SMITH: Objection as to the term -- as to
16 the definition of complaint.

17 Q. BY MS. GAGE: Formal complaints about
18 workplace misconduct.

19 A. No.

20 Q. Okay. Has that ever been the case throughout
21 your tenure with Nor Cal VA?

22 A. No. It has never been a case. I've never had
23 anyone report to me directly those issues.

24 Q. Okay. Are you aware that Dr. Velez filed an
25 EEO complaint of discrimination and retaliation?

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1 A. I was not.

2 Q. Are you aware of any other physicians who
3 filed EEO complaints against Nor Cal VA?

4 A. I am not.

5 MS. SMITH: Objection.

6 Q. BY MS. GAGE: I want to shift a little bit
7 to pay administration. Do you have an understanding of
8 the policies regarding pay administration at VA Nor
9 Cal?

10 MS. SMITH: Objection as to the term pay
11 administration.

12 Q. BY MS. GAGE: The way the employees are
13 compensated, the different ways that employees can be
14 compensated.

15 A. So, my familiarity is with physician and
16 dentists pay.

17 Q. And do you have a pretty clear understanding
18 of how the physicians and the dentists, how they are
19 paid is determined?

20 A. Yes. I would be considered the subject matter
21 expert at my facility.

22 MS. SMITH: Objection to the extent she is not
23 here testifying as an expert witness. She is
24 testifying as a fact witness.

25 Q. BY MS. GAGE: And are there certain

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1 policies in effect regarding how physicians and
2 dentists are to be paid within the system?

3 A. Yes. There is a handbook, a directive.

4 Q. Okay. And does that directive get updated
5 frequently?

6 A. I don't know how frequently they're updated in
7 the VA. Sometimes not so frequently, but, you know, it
8 does get updated.

9 Q. Okay. Do you think it should be updated more
10 frequently?

11 MS. SMITH: Objection. Her view point is
12 irrelevant.

13 Q. BY MS. GAGE: You can answer.

14 MS. SMITH: You can answer.

15 THE DEPONENT: That's a VA national thing, not
16 a local facility thing. So, I have no... I have
17 nothing to add there.

18 Q. BY MS. GAGE: I was just curious because
19 you laughed a little bit when you said that it was not
20 updated so much. I just thought you felt it should be
21 updated.

22 MS. SMITH: Objection. She's provided a
23 response. Objection to the extent that's a question.

24 Q. BY MS. GAGE: Do you know what -- do you
25 have an estimate of how frequently the handbook is

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1 updated?

2 A. I do not.

3 Q. Would you say more than every five years, more
4 frequently than every five years?

5 A. I couldn't say.

6 Q. Well, you've been around when it's been
7 updated, correct?

8 A. Yes.

9 Q. Okay. And I would think you would be able to
10 estimate to some degree of -- you know, you have more
11 knowledge than I do at least of how frequently it is
12 updated. Is it updated more than every ten years?

13 A. I would say within the time period I've been
14 in this position I've seen maybe two updates.

15 Q. Okay. And that's since you've been in the
16 position --

17 A. Of Health Care Recruiter.

18 Q. How many updates have you seen?

19 A. I... that's a tough one. The most recent one
20 I can recall is that uh... regarding physician pay.
21 They used to have a PayPal that would meet to review
22 pay recommendations. And that was disbanded a few
23 years ago. So, that was one update that I can recall.

24 Q. When you say it was expended, do you mean that
25 more people were added to the panel to help

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1 determine --

2 A. No.

3 MS. SMITH: I believe the word was --
4 disbanded.

5 Q. BY MS. GAGE: Okay. Do you have any idea
6 why that was disbanded?

7 MS. SMITH: Objection.

8 THE DEPONENT: It's a estimate decision.

9 Q. BY MS. GAGE: So, the handbook that you
10 are referencing, is that a national handbook, or are
11 there local handbooks in effect?

12 A. It is a VA handbook directive. So, it is not
13 local.

14 Q. Okay. Are there other local policies?

15 A. No.

16 Q. Okay. So, all pay is determined at a national
17 level, is that right?

18 A. All pay is governed by the national directive.
19 We -- we all have to follow that. We don't get to set
20 our own ways of doing business.

21 Q. I see. So, the people who authorize these
22 changes to the handbook are probably people who are
23 much higher up in the VA, is that your understanding?

24 MS. SMITH: Objection. Calls for speculation.

25 MS. SMITH: You can answer, Coleen. Sorry, I

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1 mean Crystal.

2 THE DEPONENT: That -- I don't know who makes
3 those decisions. It's VA, so...

4 Q. BY MS. GAGE: So, my understanding is that
5 there are various ways that physicians can be
6 compensated within the VA. And I'm just going to list
7 the five ways that I'm aware of, and I just want you to
8 confirm that that's an accurate understanding.

9 MS. SMITH: Or if it's inaccurate, please let
10 her know.

11 Q. BY MS. GAGE: So, from my understanding
12 there's like a grade and step pay, a market pay, caps,
13 a cost of living formula, and irregular pay decisions.
14 Is that an accurate understanding?

15 A. That is not accurate.

16 Q. Okay. Can you tell me what's inaccurate?

17 A. Yes. It's easier for me to tell you what is
18 accurate, because some of those things I won't recall
19 what they were. I just know that they're not
20 appropriate. For physicians, their grade and step is
21 based on their time in service. Every physician starts
22 at a grade 15 step 1, and that is their base and
23 longevity pay, and they get a step increase every two
24 years, up to step 15.

25 In addition to base pay they receive market

1 pay. So, base pay plus market pay total their salary,
2 their annual salary.

3 Q. Okay.

4 A. Those are the only factors considered for
5 physician pay.

6 Q. Okay. And you've said that they receive a
7 step increase every two years. Did you say there's a
8 limit to how many times they can receive a step
9 increase?

10 A. Yes, it caps out at step 15.

11 Q. Okay. So, then the highest grade and step
12 that a physician can be is grade 15, step 15, correct?

13 A. Correct.

14 Q. And you said they also receive market pay.
15 How is that determined?

16 A. Initially a department will decide if someone
17 is brand new to the VA, based on their specialty or
18 assignment, which is interchangeable, those two words.

19 Q. Okay.

20 A. What their total salary should be. So, let's
21 say, you know, they want to start a provider at
22 300,000. So, they say step 1 is 186,450. And they're
23 going to subtract that from 300,000 to determine what
24 that first market pay amount is going to be. So, that
25 is then what their pay is, their base, their market,

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1 and their total salary for their step 1 assignment.

2 As we go forward they will receive a biannual
3 market pay review to see if there is any reason based
4 on the market, that a market pay increase is not
5 necessary to retain them.

6 And the step increases do not coincide with
7 that biannual research.

8 Q. Okay. Are the step increases on their own
9 schedule?

10 A. They are automatic based on their time in
11 service.

12 Q. Okay. And who determines the market pay?

13 A. The Hiring Manager or the Service Chief make a
14 recommendation. And then that recommendation is
15 referenced by the Chief of Staff and the Facility
16 Director for approval.

17 Q. Has this been the same throughout your entire
18 employment with VA Nor Cal as far as you're aware?

19 A. Yes.

20 Q. And it was my understanding that there was
21 some sort of cap on the pay. Is that accurate, or is
22 that what you were referring to when you said step 15
23 would be the highest amount they could be paid. Would
24 that be considered a cap?

25 MS. SMITH: Objection. You can answer.

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1 THE DEPONENT: Okay. Base pay is -- does have
2 a cap, because it's payable for their steps only.
3 Physicians' salaries are capped at \$400,000, so they
4 can never earn more than 400,000 annually.

5 Q. BY MS. GAGE: Okay. And that would be
6 including the grade and step and the market pay?

7 A. Yes. And any performance bonuses.

8 Q. Are there any other types of caps on pay?

9 A. No. That's pretty much it, 400,000.

10 Q. Okay. And is there a cost of living payout
11 for physicians?

12 A. No, there is not.

13 Q. So, there's no cost of living reimbursement or
14 anything of that nature?

15 A. No.

16 Q. Is there a cost of living reimbursement or pay
17 for other employees?

18 MS. SMITH: Objection. To the extent she
19 knows she can answer.

20 THE DEPONENT: I know that the pay tables for
21 many GS positions are based on their location. So, it
22 takes into account locality. But for physicians that
23 is not the case.

24 Q. BY MS. GAGE: Okay. Do you have any idea
25 why that's not the case.

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1 MS. SMITH: Objection. Calls for speculation.
2 You can answer.

3 THE DEPONENT: We follow the handbook. The
4 handbook says base pay and market pay. Those are the
5 determining factors based on their assignment, what is
6 their specialty.

7 Q. BY MS. GAGE: And will a change in
8 assignment, will that be considered an irregular pay?

9 MS. SMITH: Objection. I don't understand the
10 question. To the extent you understand the question,
11 Crystal, you can answer.

12 THE DEPONENT: Irregular pay would not be
13 something -- it's not a terminology we would use.
14 Change in assignment is a terminology we would use, and
15 market pay review is unexpected if there is a change in
16 assignment.

17 Q. BY MS. GAGE: Okay. So, there -- do you
18 have an understanding of what irregular pay would be?

19 A. No.

20 Q. Okay. And how much of your day-to-day would
21 you say is spent working with physicians and dentists
22 regarding their pay?

23 A. The last few months, not at all. I have
24 strictly been doing recruitment. All of my HR
25 functions have been taken away.

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1 Q. And why is that?

2 A. Because they wanted my focus to be on health
3 care recruitment, and not HR and recruitment, but just
4 focused on recruitment.

5 Q. Okay. Is there someone else that stepped in
6 to take over those HR functions?

7 A. There are a few HR specialists within the
8 department who are handling those actions.

9 Q. And prior to your HR functions being taken
10 away, how much time would you say was spent dealing
11 with pay-related issues?

12 A. Probably 50 percent.

13 Q. Okay. Was that the majority of your HR
14 functions dealing with physician pay?

15 A. Anything physician-related, be it a personnel
16 action, they changed from full-time to part-time, they
17 went from fee basis employment to part-time. They had
18 a change in assignment where they became a supervisor,
19 and had not been a supervisor. So, all of those things
20 involve pay in some way. So...

21 Q. Sure. That makes sense. Do you have any
22 familiarity with how Dr. Velez was compensated?

23 MS. SMITH: Objection as to what point in time
24 we're talking about.

25 Q. BY MS. GAGE: Over the past three years,

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1 past three years.

2 MS. SMITH: You can answer.

3 THE DEPONENT: Okay. Um... so, I know that
4 she is compensated as a physician's supervisor. And
5 she is paid on the pay table for vascular surgery.

6 Q. BY MS. GAGE: Do you have any
7 understanding that she was compensated as a Site
8 Manager for Martinez?

9 A. I do not.

10 Q. Are you aware that any Site Managers of the
11 facilities are compensated?

12 MS. SMITH: Objection. Vague.

13 Q. BY MS. GAGE: I guess my question is, I
14 know that you work with physicians and dentists,
15 physicians and dentists regarding their pay. Do you
16 have an understanding as to how other physicians are
17 compensated, such as a Site Manager?

18 A. I do not.

19 Q. Okay. Have you ever had any understanding as
20 to how other physicians are compensated?

21 A. It was not within my purview, so I did not
22 have a need to know.

23 Q. Okay. Do you ever deal with benefit
24 administration with physicians and dentists?

25 A. Could you clarify?

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1 Q. Like are you involved in what types of
2 benefits they receive, or do you have an understanding
3 of certain benefits that are available to physicians
4 and dentists in particular?

5 A. So, in recruiting for physicians and dentists,
6 I will communicate with them what benefits are offered
7 to that group, how much vacation time they earn, how
8 much sick time they earn. I will give them a link to
9 review what federal health plans are available to them,
10 things of that nature. That's the extent of my
11 involvement with benefits.

12 Q. Okay. And are there benefit plans offered
13 based on the employee's grade or step?

14 A. I know that --

15 MS. SMITH: Objection.

16 THE DEPONENT: I'm sorry.

17 MS. SMITH: Objection. Her basis of knowledge
18 is to speaking to physicians, so the term employee, are
19 you limiting to that physicians, or are we going to be
20 using the term employee to all employees?

21 Q. BY MS. GAGE: Right now I just want to
22 know about physicians?

23 A. For physicians there is a difference if you're
24 part-time versus full-time. Because all of your
25 benefits will be prorated then.

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1 Q. Is that the only difference, is that they will
2 be prorated if the physician is part-time?

3 A. Yes.

4 Q. Okay. And do you have any understanding as to
5 benefits that other VA Nor Cal receive who are not
6 physicians or dentists?

7 A. No.

8 Q. I want to mark an exhibit. Is it -- would it
9 be best to share the exhibit through the chat feature?
10 Does that work for everyone?

11 MS. SMITH: It should be displayed. You
12 should be able to share it.

13 MS. GAGE: Sure.

14 MS. SMITH: If you're not the host you're not
15 able to share your screen.

16 THE REPORTER: Off the record.

17 (Recess taken.)

18 MS. GAGE: Back on the record, please.

19 Q. Ms. Keeler, do you recognize this document?

20 A. I recognize it. It's a SF 50.

21 MS. SMITH: Objection. Just for the record,
22 you're referring to Exhibit 1, correct?

23 MS. GAGE: Exhibit 1, yes.

24 (Plaintiff's Exhibit 1 was marked for
25 identification.)

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1 MS. SMITH: Is that a three-page document?

2 MS. GAGE: Yes, a three-page document.

3 MS. SMITH: Can the witness have the
4 opportunity to review the document before you start
5 asking questions about it, please?

6 MS. GAGE: Yes. Take few minutes to review
7 it, or as long as you need.

8 MS. SMITH: I don't know if you have to give
9 her control to zoom out. But Ms. Keeler, just let us
10 know what would be easiest for you.

11 THE DEPONENT: You can scroll to the next
12 page.

13 Q. BY MS. GAGE: Sure.

14 A. Okay. Next page.

15 Q. Just a blank page it looks like.

16 A. Okay.

17 Q. Okay. So, you said that you recognized this
18 as -- was it a specific form that you stated?

19 A. Yes. It's a Standard Form 50, up in the upper
20 left-hand corner. So, we refer to it as an SF 50, and
21 it is a record of the personnel action that was
22 accomplished on a provider.

23 Q. Okay. And are you familiar with these types
24 of forms?

25 A. Yes.

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1 Q. Okay. And are these forms ones that you would
2 work with when you were doing the HR functions of your
3 current position?

4 A. When we complete a personnel action, this form
5 is created as a result of that coding.

6 Q. I see. Okay. So, if you take a look, it
7 looks like this form was -- the effective date is
8 listed as May 20th, 2001, correct?

9 A. Yes.

10 Q. And that would have been the date that the
11 personnel action became effective?

12 A. Correct.

13 Q. Okay. And it looks like the Nature of Action,
14 it says reassignment. And from your understanding, is
15 that just reassignment of a physician?

16 MS. SMITH: Objection. To the extent she's
17 answering the question what is her understanding of the
18 use of reassignment, she can answer. But the question
19 as asked is leading.

20 THE DEPONENT: When coding a reassignment
21 action, it can be any change in an assignment. Maybe
22 they've had supervisory duties added. Maybe they've
23 had supervisory duties taken away. Maybe they have
24 become a Program Manager for a certain program.

25 Q. BY MS. GAGE: Okay. So, would you have

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1 received a form similar to this that said reassignment
2 when they removed your already duties recently?

3 A. No.

4 Q. Well, I thought you said when there's a change
5 in duty. Did you not say when there's a change in job
6 duties?

7 MS. SMITH: Objection.

8 THE DEPONENT: It is not always necessary. I
9 am on the same position description as a Human
10 Resources Specialist that the other HR Specialists are
11 on. So, it was just my role and responsibilities that
12 were changed, not necessarily -- not my PD.

13 Q. BY MS. GAGE: All right. So, when roles
14 and responsibilities are changed, there is not always a
15 form like this that's generated?

16 A. Correct.

17 Q. Okay. And so -- but there sometimes is a form
18 that's generated just due to changes in
19 responsibilities, is that right?

20 MS. SMITH: Objection. Calls for speculation.
21 To the extent you know you can answer.

22 THE DEPONENT: The form would be generally
23 created if a personnel action was accomplished for a
24 job announcement or a change in pay perhaps.

25 Q. BY MS. GAGE: Okay. Are there any other

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1 reasons why the form would be created?

2 A. Any of the reasons I listed as a possible
3 reassignment.

4 Q. Okay. So, I just want to clarify, though,
5 you said that one of these forms is not always created
6 when there's a change in job duties. But is it
7 sometimes created when there's a change in job duties,
8 or is this something that's for something that's more
9 formal?

10 MS. SMITH: Objection.

11 THE DEPONENT: There would be more --

12 MS. SMITH: Go ahead.

13 THE DEPONENT: It would be more formal, the
14 need for this.

15 Q. BY MS. GAGE: Okay. I understand. Let's
16 see. And then under Work Schedule, it looks like No.
17 32, it says Part-time. And then No. 33 says Part-time
18 Hours Per Biweekly Pay Period, 70. Do you see that?

19 A. Yes.

20 Q. I'm just a little bit confused about exactly
21 what that means. Would it -- does this mean that the
22 employee, which is Dr. Velez, on this form was working
23 70 hours biweekly in this position?

24 A. Yes.

25 Q. Okay. And biweekly, is that used as every two

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1 weeks, or twice a week?

2 A. Every two weeks. Our pay periods are two
3 weeks.

4 Q. Got it. Okay. So, this would seem to say
5 that it lists position title and number as physician.

6 A. Uh huh.

7 Q. So, this is the same as a physician. She was
8 working part-time 70 hours every two weeks, is that
9 correct?

10 A. Correct.

11 Q. Okay. And then towards the bottom it says
12 selected from Martinez Site Manager. Do you see that?

13 A. Yes.

14 Q. Do you know what exactly would have generated
15 that in the form? Selected From, is that a typical
16 field in the form?

17 A. I do not know. I can't -- I can't discern if
18 there was a job announcement that she was selected
19 from. I don't know.

20 Q. Okay. Have you seen the Selected Form
21 generated in these forms before?

22 A. For physicians, no. Because all of the
23 personnel actions that I have processed have been
24 non-competitive appointments, and we do not select --
25 we do not select from a certificate in U.S.A. job

1 advertisements.

2 Q. Okay.

3 A. There has been a shift. Since back in 2001
4 they used to advertise every physician's job on U.S.A.
5 jobs. And now we have the opportunity to advertise in
6 other venues, so that's not something I've had
7 experience doing.

8 Q. Okay. So, when you've seen the Selected From
9 field before, that was in relation to employees who
10 were not physicians?

11 A. No, I haven't seen it before.

12 Q. Never seen that before?

13 A. I don't -- I don't process non-physician or
14 dentist actions, or I have not processed anyone other
15 than physicians or dentists.

16 Q. So, typically there's no field that says
17 Selected From?

18 A. Correct. Not on the actions that I have done
19 for physicians and dentists, if that makes sense.

20 Q. And then if we scroll down to the next page,
21 under No. 45, Remarks. It says special pay authorized
22 under 38 U.S.C. 7431.

23 Do you have an understanding of what special
24 pay would mean in this context?

25 A. I couldn't tell you. I mean, in reading the

1 document I can take a guess, but I couldn't tell you
2 for certain what that means.

3 Q. Yeah. Can you give me a guess based on the
4 knowledge that you have?

5 MS. SMITH: Objection. She's been instructed
6 not to guess.

7 Q. BY MS. GAGE: Or not -- I guess an
8 estimate -- or not a guess, I would say, would be
9 something where it's not based on personal knowledge,
10 but since you do have knowledge of these forms, if you
11 have like what's your best understanding of what
12 special pay might mean.

13 MS. SMITH: Objection. Do you have any
14 personal knowledge of the specific code task being
15 referenced in this document?

16 THE DEPONENT: I do not. Not to that
17 reference.

18 MS. SMITH: My objection stands, and I'm
19 instructing her not to answer, not to guess.

20 Q. BY MS. GAGE: Okay. Have you seen the
21 words special pay on a form like this before?

22 A. I have not.

23 Q. Okay. Is there something called special pay
24 that's another aspect of how a physician or dentist
25 could be paid?

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1 A. No.

2 Q. Okay. So, you just have no idea what special
3 pay could refer to here, correct?

4 A. I do not.

5 MS. GAGE: Okay. I'm done with this, so I'll
6 stop sharing this exhibit. I would like to introduce
7 Exhibit 2.

8 (Plaintiff's Exhibit 2 was marked for
9 identification.)

10 Q. BY MS. GAGE: Can everyone see this page?

11 A. Uh huh.

12 Q. Okay. So, this is a four-page document
13 entitled Executive Career Field Performance Appraisal
14 at the top. I want to give you a few minutes to review
15 this document as well, so let me know when you're
16 ready, I can scroll to the next page.

17 A. You can scroll to the next page.

18 MS. SMITH: And for reference, when you say
19 this document, you're referring to Exhibit 2, which is
20 a four-page document, is that correct?

21 MS. GAGE: Yes.

22 MS. SMITH: Can you use the mouse so she can
23 see the entire page?

24 Q. BY MS. GAGE: Is that better? Can you
25 see?

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1 A. Uh huh. Okay. Okay.

2 Q. Okay. And the last page?

3 A. Okay.

4 Q. Okay. Do you recognize this document?

5 A. I do.

6 Q. Okay. And can you explain what an ECF
7 Performance Appraisal is?

8 A. An Executive Career Field Performance
9 Appraisal is the appraisal used for anyone who is in a
10 supervisory role. So, each employee has a performance
11 approximately done each year. This is the one used for
12 supervisors.

13 Q. Okay. And it says Position Title, Site
14 Manager here. And that would be the supervisory role
15 that's being evaluated, is that correct?

16 A. She actually is a Physician Supervisor in
17 vascular surgery at the Martinez location.

18 Q. Uh huh.

19 A. And I don't believe that that's represented
20 here, and it should be.

21 Q. Okay. But what is represented is that the
22 Site Manager position is being evaluated under the
23 Performance Appraisal?

24 A. That's what I see.

25 Q. Okay. And what is the result of a Performance

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1 Appraisal? Are any actions taken as a result of the
2 outcome of the Performance Appraisal?

3 A. Every employee generally who receives an
4 outstanding or an excellent rating as their overall
5 rating is eligible to receive a performance award.

6 Q. Okay. And I know you said before that there's
7 a cap of \$400,000 for physicians, so that even if an
8 employee were eligible for that, if they had already
9 been making \$400,000, they are no longer eligible?

10 A. Correct. They would not be able to receive
11 it, because they had already earned 400,000.

12 Q. I see. Are you involved at all in these
13 Performance Appraisals?

14 A. I have been involved in processing the
15 personnel actions um... previously.

16 Q. Okay. And what does that entail exactly?

17 A. That entails collecting all the data for
18 recommendations of the employees, meeting their uh...
19 performance reviews. Actually I'm misspeaking, because
20 this is in relation to a Performance Appraisal, and I
21 wasn't involved in Performance Appraisals. I was
22 involved in Physician Performance Pay, which is a
23 separate form.

24 Q. I see. Okay. Do you know how these forms are
25 generated? Is there someone that fills them in, or are

1 they generated similar to the form that we just looked
2 at as Exhibit 1?

3 MS. SMITH: Objection. Vague. To the extent
4 you understand the question, you can answer.

5 THE DEPONENT: Okay. Um... the performance
6 criteria that was listed, I believe, on page 2.

7 Q. BY MS. GAGE: Uh huh.

8 A. Could you scroll to that page?

9 Q. Sure.

10 A. So, the performance elements here are dictated
11 by the VA.

12 Q. Okay.

13 A. And each facility then breaks them down.

14 Q. Uh huh.

15 A. To apply to their location. So, the director
16 receives the performance measures, and then he passes
17 them on to the Chief of Staff. The Chief of Staff sets
18 what his elements are, and they go down like that.

19 And each supervisor completes these for their
20 employees.

21 Q. Okay. So, scrolling back up to the top here,
22 would a supervisor have entered the fields up here,
23 like Velez, Pauline, pay level salary fields? Is that
24 pay level entered by the supervisor?

25 MS. SMITH: Objection.

1 THE DEPONENT: It could be the supervisor or
2 their Administrative Assistant.

3 Q. BY MS. GAGE: Okay. I just wanted to
4 clarify, did you say But these ECF Performance
5 Appraisals are entered manually?

6 A. It is created manually by the supervisor or
7 their administrative team, to be carried out and
8 finalized.

9 Q. I see. Okay. That makes more sense then.
10 And then on this page, page 2, under Performance -- I'm
11 sorry. So, on page 2 you said that these elements that
12 are listed come from the VA, is that right?

13 A. Yes.

14 Q. Okay. And then where there's a star, it says
15 Denotes Critical Element. Do you know who determines
16 which elements are critical?

17 A. I do not.

18 Q. Okay. And then on page 3, Section H, it says
19 Higher Level Review. And then Action. And it's
20 checked, Concur with and approve initial rating. And
21 it doesn't look like there's a signature underneath
22 there.

23 A. It's at the bottom of the page.

24 Q. I see. And that is referring to the person
25 who authorized the Higher Level Review?

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1 A. Yes.

2 Q. I see. Okay. And then finally on the last
3 page it says Pauline Velez, M.D., Site Manager,
4 Martinez Outpatient Clinic. Goals for fiscal year
5 2007.

6 Are these typical goals that are added to the
7 end of a ECF review?

8 MS. SMITH: Objection. You can answer.

9 THE DEPONENT: I do not know.

10 Q. BY MS. GAGE: Okay. Do you know who would
11 have written these goals?

12 MS. SMITH: You can answer.

13 THE DEPONENT: My assumption would be the
14 manager.

15 Q. BY MS. GAGE: Okay. Therefore, the Site
16 Manager position, is that your understanding?

17 MS. SMITH: Objection. Calls for speculation.

18 Q. BY MS. GAGE: You can answer. Is that
19 your understanding, Ms. Keeler, that these are for the
20 Site Manager position?

21 MS. SMITH: Objection again. Calls for
22 speculation.

23 Q. BY MS. GAGE: I'm still entitled to an
24 answer, please.

25 MS. SMITH: To the best of your ability -- to

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1 the best of your ability, after you've reviewed the
2 document you can answer what your understanding is.

3 THE DEPONENT: It says Site Manager on the
4 form.

5 Q. BY MS. GAGE: So, that's your
6 understanding, is that correct?

7 A. I -- I can't say what the person intended, but
8 that's what it says on the form.

9 MS. GAGE: Okay. And I'll stop sharing that
10 exhibit.

11 Okay. I'm going to share Exhibit 3.
12 (Plaintiff's Exhibit 3 was marked for
13 identification.)

14 Q. BY MS. GAGE: Can everyone see this
15 document?

16 MS. SMITH: Exhibit 3 appears to be a 10-page
17 document.

18 MS. GAGE: Yes. That's correct.

19 Q. Ms. Keeler, can you please take some time to
20 review this document and let me know if I need to
21 scroll down.

22 A. Can you make it a little bit bigger?

23 Okay. Okay. Okay. Okay. Okay. Okay.
24 Okay. Okay.

25 Q. Going to the last page.

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1 A. Okay. Okay. Okay.

2 Q. Do you recognize this document?

3 A. I -- I recognize it as a Performance
4 Appraisal, yes.

5 Q. Okay. And it looks like under the position
6 title at the top, it says Assistant Chief, Surgical
7 Service Physician. And then someone -- it looks like
8 someone wrote in Site Manager, Martinez. Do you see
9 that?

10 A. I do.

11 Q. Okay. Do you know... oh. I'm sorry. It also
12 looks like location, it says NCHCS. And then
13 Sacramento VAMC is crossed out and replaced with
14 Martinez. Do you see that there?

15 A. I see it.

16 Q. Okay. Is it common for there to be
17 corrections in pen or in writing on forms like this?

18 MS. SMITH: Objection. Calls for speculation.
19 To the extent you know you can answer.

20 THE DEPONENT: If a document has been fully
21 completed, supervisors or HR may sometimes make
22 corrections based on the actual record.

23 Q. BY MS. GAGE: Okay. So, it wouldn't be
24 appropriate to make these corrections in writing unless
25 a document has been fully executed, is that right?

1 A. Correct.

2 Q. I want to take a look and see... excuse me.
3 So, on this second page right here um... it lists these
4 elements again. And I think on the last exhibit,
5 Exhibit 2, you said that the elements are determined by
6 the VA, right?

7 A. Uh huh. Yes.

8 Q. And do you have any familiarity with what the
9 elements -- what each of them means, or how they're
10 evaluated?

11 A. Each year it changes what comes under those
12 element titles. The performance measures change under
13 those each and every year.

14 Q. Okay. And is that a directive from like
15 higher up in the VA at a national level?

16 A. Yes, ma'am.

17 Q. Okay. And then I think you said at some point
18 that there are people at the local level who evaluate,
19 after receiving this from the national level, is that
20 right?

21 MS. SMITH: Objection.

22 Q. BY MS. GAGE: You can answer.

23 A. So, to clarify what I communicated earlier,
24 when these performance measures come out from national,
25 each facility has to apply it to what their facility

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1 does. So, it has to be relevant to what we do. This
2 is on a global level, these elements. And then we have
3 to apply it to what do, we specifically do, what
4 services do we provide, etcetera.

5 Q. I see. So, for instance, the first element
6 says, leading change, 20 percent critical, would the
7 leading change element be something that's from the
8 national level, but all of the intricacies of how
9 that's evaluated would be determined at a more local
10 level?

11 A. Yes.

12 Q. Okay. And do you know if the more national
13 level determines which factors are critical versus
14 noncritical, or if that's something being done at the
15 local level?

16 A. I don't recall. I -- I used to receive an ECF
17 myself, and I helped to create them for physicians'
18 staff managers, but I don't recall if we set them on
19 critical elements, or if that was determined higher.
20 It's been too many years.

21 Q. Okay. That's fair. Of course, now in the
22 Elements/Achievements box here at the bottom, it says,
23 "Dr. Velez wears many hats; Vascular Surgeon, Assistant
24 Chief of Surgery for East Bay, Site Manager (aka Chief
25 Administrative Officer) for Martinez, and VISN-level

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1 program leader and innovator. For a variety of
2 reasons, this year, the ECF is being completed by me,
3 apparently in an effort to glean a more clinical
4 perspective on her outstanding performance. In years
5 past, she was evaluated by administrative supervisors.
6 Obviously, a vast amount of what she does is
7 non-clinical; I have attempted to recognize both her
8 clinical and non-clinical achievements in scoring this
9 year's ECF. Fortunately, through her detailed fiscal
10 year 14 ECF Self Report document, her outstanding
11 performance is obvious. I have appended some
12 highlights and comments to emphasize certain
13 accomplishments."

14 And then that looks like it was signed off by
15 her supervisor?

16 A. I couldn't say whose initials those are.

17 Q. The person who was evaluating her would have
18 written those comments there, is that right?

19 MS. SMITH: Objection. Calls for speculation.

20 Q. BY MS. GAGE: Is that typically how that
21 works?

22 MS. SMITH: Objection. Calls for speculation.
23 You can answer.

24 THE DEPONENT: This is the area that the
25 supervisor should be writing their assessment of the

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1 employee.

2 Q. BY MS. GAGE: Okay. And so I want to
3 focus on this where the supervisor provides obviously a
4 vast amount of what she does is non-clinical. Is it
5 your understanding that she's being reviewed for both
6 her clinical and non-clinical position in this
7 evaluation?

8 MS. SMITH: Objection. Calls for speculation.
9 She did not create this document.

10 Q. BY MS. GAGE: You can answer.

11 A. I have no knowledge of exactly what she's
12 being rated on. It's outside of my scope.

13 Q. So, on the first page up here, where it says
14 Position Title, Assistant Chief, Surgical Service
15 Physician, and then someone one wrote in Site Manager
16 Martinez, I am just wondering if you would know if both
17 of those positions, would that be standard, that the
18 physician is the person that's being evaluated for
19 listed in that box?

20 MS. SMITH: Objection. Calls for speculation.

21 Q. BY MS. GAGE: You can answer.

22 THE DEPONENT: That would be an assumption.

23 Q. BY MS. GAGE: And based on your experience
24 reviewing these forms, is that typically where it lists
25 the physician that's being reviewed?

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1 MS. SMITH: Objection. Go ahead. You can
2 answer.

3 THE DEPONENT: The functional title is
4 generally put into that book box, yes.

5 Q. BY MS. GAGE: What do you mean by
6 functional title?

7 A. There may be, you know, her role is a
8 physician's supervisor, but her functional title is
9 what they are displaying there. They are saying those
10 are the hats she wears.

11 Q. I see. Okay. I just want to scroll down to
12 page 5, and it says Self Assessment Fiscal Year 2014.
13 Is it typical with these ECF reviews to write a self
14 assessment?

15 MS. SMITH: Objection. Vague. Calls for
16 speculation. You can answer.

17 THE DEPONENT: It is not required, but many
18 employees do submit a self assessment.

19 Q. BY MS. GAGE: Okay. And is a self
20 assessment factored into the evaluation in any way?

21 MS. SMITH: Objection. Calls for speculation.
22 To the extent you know, you can answer.

23 THE DEPONENT: When I was a supervisor I would
24 review what was submitted to me as a self assessment,
25 and I would consider it in rating my employees. So,

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1 that's how I could respond to that.

2 Q. BY MS. GAGE: That makes sense. And so I
3 think you said earlier that once the form was
4 finalized, it would be okay for HR to make markings on
5 it. These check marks right here on the side of the
6 self assessment page, is that something that it seems
7 like HR would have checked off on after the form was
8 completed?

9 MS. SMITH: Objection. Calls for speculation.
10 She last no idea who would have checked off on these
11 writings. She did not create this document.

12 MS. GAGE: I'm just asking about the typical
13 process.

14 MS. SMITH: If you're asking specifically
15 about this document and the check marks and the
16 writings on this document, it calls completely for
17 speculation.

18 MS. GAGE: Okay. I'll can my question.

19 MS. SMITH: To the extent she knows, she can
20 answer, but it's speculative.

21 MS. GAGE: I'm going to rephrase the question.

22 MS. SMITH: Okay.

23 Q. BY MS. GAGE: So, in the -- do the HR
24 people typically go through the employee self
25 assessments and make markings, or check off anything

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1 that they've written?

2 A. Not to my knowledge.

3 MS. SMITH: Objection. Calls for speculation.

4 MS. GAGE: Thank you. Okay. That's all for
5 Exhibit 3.

6 I want to go to a document that is listed as
7 Exhibit 5, but I want to mark it as Exhibit 4. So, I
8 know I sent it to you.

9 MS. SMITH: The best way to identify it would
10 be you're displaying what will be marked as Exhibit 4,
11 titled Performance Plan for Fiscal Year 2010, Site
12 Manager. Does it have Bates number, Ms. Gage?

13 MS. GAGE: Yes. It is Bates stamped USA005938
14 through 5952.

15 MS. SMITH: 59...

16 MS. GAGE: 52.

17 MS. SMITH: 52. Okay.

18 (Plaintiff's Exhibit 4 was marked for
19 identification.)

20 Q. BY MS. GAGE: Yes. Are you able to see
21 this document, Ms. Keeler?

22 A. Yes.

23 Q. Okay. Do you need me to zoom in or zoom out?

24 A. You can zoom in a little bit.

25 Q. Sure. Does that help?

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1 A. Yes.

2 Q. Okay. Can you take a moment to review, and
3 let me know if I need to scroll through the pages,
4 please.

5 A. Okay. Okay. Okay. Okay. Okay. Okay.
6 Okay. Okay. Okay. Okay. Okay. Okay. Okay. Okay.
7 Okay.

8 Q. Do you recognize this document?

9 A. This is the more laid out version of the
10 elements that you saw on the ECF Performance Appraisal.

11 Q. Okay. So, this is a more in-depth explanation
12 of those elements?

13 A. Correct.

14 Q. Okay. And the title of this document, it says
15 Performance Plan for Fiscal Year 2010, Site Manager,
16 October 1, 2009 through September 30th, 2010. Do you
17 see that at the top?

18 A. I do.

19 Q. Okay. Is it typical for Performance Plans to
20 be where these elements are laid out?

21 MS. SMITH: Objection. To the extent she
22 knows she can answer.

23 THE DEPONENT: The Performance Plan is part of
24 the ECF Performance Appraisal. It is an attachment to
25 that to further explain element 1, 2, 3, 4, etcetera.

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1 So, it identifies exactly what you're being rated on.

2 Q. BY MS. GAGE: Okay. I want to jump to
3 page 3. In the middle right there, do you see where it
4 says BP1, Human Resources?

5 A. Uh huh.

6 Q. Do you have any understanding of what BP1
7 refers to?

8 A. No. I don't.

9 Q. Okay. Are these types of documents that you
10 have worked with frequently in the past, these
11 Performance uh... what was the title, Performance
12 Plans?

13 A. As an Administrative Officer in Medical
14 Service, I've had experience working with them. And in
15 Nursing Services as Administrative Officer I had
16 experience working with them.

17 Q. Okay. And when you worked with them did you
18 receive them from someone else to review? How exactly
19 did you become acquainted with these forms?

20 A. As the lead administrative person within the
21 service at those times, I was responsible for making
22 sure that the documents were created by myself, my
23 administrative team, and that they were correct in
24 their formatting before the supervisor signed them,
25 shared them with the employees, and they were submitted

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1 to HR.

2 Q. Okay. Makes sense. I'm having trouble
3 understanding exactly what it was referring to.

4 A. I'm sorry. Was that a question?

5 Q. No. All right. Is it all right if we take a
6 15-minute break? I'm almost done.

7 MS. SMITH: Yeah, we can come back at 11:30.

8 MS. GAGE: Okay. That sounds great.

9 MS. SMITH: Okay. Thank you.

10 (Recess taken.)

11 MS. GAGE: Okay. So, I want to share this
12 next exhibit marked as Exhibit 5.

13 (Plaintiff's Exhibit 5 was marked for
14 identification.)

15 MS. SMITH: Just for the record, what are the
16 Bates numbers of Exhibit 5?

17 MS. GAGE: USA000572 through 573.

18 MS. SMITH: Thank you.

19 Q. BY MS. GAGE: So, Ms. Keeler, can you see
20 this document?

21 A. Yes.

22 Q. Okay. Can you see this document? If you can
23 just take a few minutes to review, and please let me
24 know if you need me to scroll to the next page.

25 A. You can scroll to the next page. Okay.

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1 Q. Okay. Do you recognize this document?

2 A. I do.

3 Q. And is that your signature at the bottom of
4 the Panel Members on the second page?

5 A. It is.

6 Q. Okay. And this document is titled
7 Compensation Panel Action. And the box Biennial Review
8 is checked. Would this be a form sort of commemorating
9 the biennial reviews you that you were discussing
10 earlier that takes place?

11 A. Yes. It is.

12 Q. Okay. And is it typical for there to be a
13 panel review every time?

14 A. At that time it was.

15 Q. Okay. And this was dated December 15th, 2015.
16 Was there any point in time where that stopped being
17 typical?

18 A. Yes. I had mentioned previously that they
19 disbanded the compensation panel.

20 Q. I see.

21 A. So, just a few years ago.

22 Q. Okay. So, prior to this disbandment of the
23 panel, there would be a panel of members who would
24 review any changes in compensation, is that correct?

25 A. Correct.

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1 Q. Okay. And what did you do in terms of
2 reviewing that decision? What types of steps did you
3 take to review before signing off on this form?

4 A. So, as the HR Technical Advisor I attended the
5 meetings. And the participants, the chair was the
6 Chief of Staff. The participants would review the
7 recommendations made by the supervisor, or the service
8 chief for a market pay increase, or perhaps even not
9 any increase at all if it was determined that it wasn't
10 necessary. And I would just document what was
11 approved.

12 Q. Okay. And you said you would attend meetings.
13 How many meetings are typical for a pay increase like
14 this?

15 MS. SMITH: Objection. Calls for speculation.

16 THE DEPONENT: We reviewed all physician staff
17 every two years.

18 Q. BY MS. GAGE: And was there -- before the
19 panel system was disbanded, was there a meeting with
20 all panel members where you discussed the decision?

21 A. Yes. Panel members would be called for the
22 specific group. Like this -- for instance, Dr. Velez
23 was a Tier 2, so we had to have at least two Tier 2
24 physicians on there, as well as the Chief of Staff.
25 So, that group would get together and review the

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1 others.

2 Q. I see. And so would Dr. Velez have been
3 eligible to sit on the panel for other Tier 2
4 physicians to review them as well?

5 A. Not all physician staff participated in
6 compensation panels.

7 Q. Okay. Was there some system to determine who
8 would participate in compensation panels?

9 A. It was generally the service chiefs.

10 Q. Okay. I understand. And it looks like this
11 -- there was a pay increase approval, but then after
12 the fact there's some markings on here with the
13 initials it looks like PD. Do you see that?

14 A. Uh huh.

15 Q. Do you have any idea --

16 A. Yes.

17 Q. -- who PD is?

18 A. I do. She was my HR assistant. Her name was
19 Pamela Delpapa. And it is referencing that the base
20 pay increase occurred in January. These reviews were
21 completed in December, but the effective date was in
22 January, after the base pay increase had occurred. So,
23 we had to update the base pay, and as a result the
24 total pay. So, it was still an increase in salary.

25 Q. I see. And is that why it says Accounting for

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1 1% increase in base pay effective 1/10/2016 on the
2 first page?

3 A. Correct.

4 Q. Okay. And do you recall why there was an
5 increase in the base pay?

6 A. The President ordered it, so...

7 Q. Okay. That makes sense. Okay. I think that
8 is all for this exhibit, and I don't have any further
9 questions.

10 MS. SMITH: Thank you.

11 THE REPORTER: Valerie, would you like a copy?

12 MS. SMITH: Yes. We do want a copy, Mr.
13 Hunter.

14 (Ending time: 11:37 a.m.)
15
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1 STATE OF CALIFORNIA)
2 COUNTY OF) SS.
3)
4)
5)
6)
7)

8 I, the undersigned, declare under penalty of
9 perjury that I have read the foregoing transcript, and
10 I have made any corrections, additions, or deletions
11 that I was desirous of making; that the foregoing is a
12 true and correct transcript of my testimony contained
13 therein.

14 EXECUTED this _____ day of _____,
15 20____, at _____, California.
16 (City)
17
18

19 _____
20 CRYSTAL KEELER
21
22
23
24
25

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R E P O R T E R ' S C E R T I F I C A T E

I, WAYNE A. HUNTER, CSR No. 5456, Certified
Shorthand Reporter, certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;

That the testimony of the witness and all
objections made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney or of any of the parties nor
financially interested in the action.

Dated this 14th day of August, 2021.



Wayne A. Hunter, C.S.R. No. 5456

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Index: \$400,000..approval

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